

Applicants : Ann Marie Schmidt, et al.
U.S. Serial No: 10/665,867
Filed : September 19, 2003
Page 4

REMARKS

Claims 1, 2, 4, 15, 17-19 and 23 are pending in the subject application. Applicants have herein canceled claims 1, 2 and 15 without prejudice. Accordingly, upon entry of this Amendment, claims 4, 17-19 and 23 will be pending.

Restriction Requirement

In the June 29, 2005 Office Action, the Examiner restricted pending claims 1, 2, 4, 15, 17-19 and 23 to one of the following allegedly distinct inventions under 35 U.S.C. §121 as follows:

- I. Claims 1, 2 and 15, drawn to an isolated EN-RAGE peptide, classified in class 530, subclass 324;
- II. Claim 4, drawn to an isolated nucleic acid molecule encoding EN-RAGE peptide, classified in class 536, subclass 23.5;
- III. Claim 17, drawn to an antibody immunoreactive with an epitope comprising a unique sequence of EN-RAGE, classified in class 530, subclass 387.1;
- IV. Claim 18, drawn to a ribozyme which is capable of specifically cleaving EN-RAGE mRNA in a cell, classified in class 536, subclass 23.2; and
- V. Claims 19 and 23, drawn to a transgenic nonhuman mammal whose germ or somatic cells contain a nucleic

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U.S. Serial No: 10/665,867
Filed : September 19, 2003
Page 5

acid molecule which encodes EN-RAGE peptide introduced into the mammal or an ancestor at an embryonic stage, classified in class 800, subclass 21.

In response, applicants hereby elect Group III, i.e., claim 17, with traverse for prosecution at this time.

Applicants, however, respectfully request that the Examiner reconsider and withdraw the restriction requirement.

Under M.P.E.P. §803, the Examiner must examine the application on the merits if examination can be made without serious burden, even if the application would include claims to distinct or independent inventions. That is, there are two criteria for a proper requirement for restriction: (1) the invention must be independent and distinct, and (2) there must be a serious burden on the Examiner if restriction were not required.

Applicants respectfully submit that there would not be a serious burden on the Examiner if restriction were not required, because a search of the prior art relevant to the claim of Group III would provide the relevant prior art for Groups II, IV and V. Since there is no burden on the Examiner to examine groups II-V together in the same application, the Examiner must examine the entire application on the merits.

In view of the foregoing, applicants' maintain that restriction is not proper under 35 U.S.C. §121, and respectfully request that the Examiner reconsider and withdraw the requirement for restriction. No fee, other than the \$60.00 fee for a one-month extension of

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U.S. Serial No: 10/665,867
Filed : September 19, 2003
Page 6

time, is deemed necessary in connection with the filing of this Amendment. However, if any additional fee is required, authorization is hereby given to charge the amount of such fee to Deposit Account No. 03-3125.

If a telephone interview would be of assistance in advancing prosecution of the subject application, applicants' undersigned attorneys invite the Examiner to telephone them at the number provided below.

Respectfully submitted,

I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to:

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Alan J. Morrison
Reg. No. 37,399

8/23/01
Date

John P. White
Registration No. 28,678
Alan J. Morrison
Registration No. 37,399
Attorneys for Applicants
Cooper & Dunham LLP
1185 Avenue of the Americas
New York, New York 10036
Tel. No. (212) 278-0400